

1
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1897 OF 2006

Rashmin R. Shah. Petitioner.

vs.

State of Maharashtra
& Anr. Respondents.

Shri Kuldeep S. Patel for petitioner.

Smt. S.D. Shinde, APP, for State.

CORAM : J.N. PATEL, AND

SMT. ROSHAN DALVI, JJ.

DATE : 12th September, 2006.

P.C.

. The learned counsel for the petitioner submits that the matter pertains to learned Single Judge and has been wrongfully placed before the Division Bench. On 5.9.2006 it was placed before the learned Single Judge and certain orders came to be passed. On that date the learned Single Judge observed that the matter pertains to the Division Bench and that is how the matter is placed before this Court and the learned counsel for the petitioner has also filed second set. The matter is placed before us on the direction of the learned

Single Judge. We will examine the matter when it is taken up for admission. Therefore, request of the learned counsel for the petitioner that the matter pertains to Single Judge can also be examined at that stage.

2. By consent the matter is taken up for admission as it can be disposed of at the stage of admission itself. The only grievance the petitioner has is in respect of the order dated 6.7.2006 passed by the learned Metropolitan Magistrate, 34th Court in C.C. No. 62/SW/2005. The operative part of the order is that while the learned Magistrate has directed the Senior P.I. Tilaknagar Police Station to take cognizance of the complaint and register F.I.R. He has also directed arrest of the accused and investigate the matter and give report accordingly. The objectionable part is the order to arrest the accused which the learned counsel for the petitioner submits cannot be passed by the learned Magistrate as it is for the investigating agency to decide whether the accused is required to be arrested or not and then seek his remand for the purpose of investigation.

3. The learned APP fairly states that if for the purpose of investigation the petitioner is required to be arrested it is for the investigating agency to take a decision in the matter and arrest

3

the accused and, therefore, so far as the words in the operative part of the order passed by the learned Magistrate "arrest the accused" are concerned, the same stand deleted. We make it clear that this does not in any manner prevent the investigating officer from causing arrest of the accused if his custody is required for the purpose of interrogation.

4. Petition stands disposed of accordingly.

(J.N. Patel, J.)

(Smt. Roshan Dalvi, J.)